BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WALAND LUMBER COMPANY)

Appearances:

For Appellant: Dana C, Smith, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner

O P I N I O N

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying to the extent of $990.57 the claim of Waland Lumber Company for a refund of tax in the amount of $1,650.94 for the taxable year ended December 31, 1942.

Appellant was incorporated under the laws of the State of Minnesota and for many years prior to 1942 was duly qualified to do business as a foreign corporation in the State of California Prior to August 12, 1942, Appellant disposed of all its property in the State of California and ceased to do business within this State. On that day the Appellant corporation was dissolved pursuant to proceedings under the laws of Minnesota. On November 12, 1942, its certificate of withdrawal was filed with the California Secretary of State under Civil Code Section 411. The California bank and corporation franchise tax for the taxable year 1942 had previously been paid in the sum of $3,962.28 and Appellant filed a claim for refund of 5/12ths thereof pursuant to Section 13(k) of the Act, which provides:

> "Any bank or corporation which is dissolved and any foreign corporation which withdraws from the State during any taxable year shall pay a tax hereunder only for the months of such taxable year which precede the effective date of such dissolution or withdrawal.. .."

Appellant's theory in filing the claim for refund was that the date of dissolution was the controlling date for prorating the tax. Respondent allowed the claim only to the extent of 2/12ths of the tax paid on the ground that the date of the filing of the certificate of withdrawal and not the date of dissolution controls the determination of the tax for a foreign corporation. It is the theory of the Commissioner that Section 13(k) should be construed as though it read, "any California corporation which is dissolved and any foreign corporation which withdraws."

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Section 278 of the Civil Code provides that in the construction of the General Corporation Law the term "corporation", unless it is otherwise provided, refers only to a domestic corporation. Section 5 of the Bank and Corporation Franchise Tax Act provides, however, "the term 'corporation' ...shall include every corporation ... other than those expressly exempted from the tax ..." It is reasonable to conclude, accordingly, that if the legislature intended the words "any corporation" in the Tax Act to refer only to domestic corporations it would have so provided.

Section 411 of the Civil Code provides for the withdrawal or surrender of the right of a foreign corporation to transact California business. It is clear that a foreign corporation may withdraw under this Section without dissolving. It would seem, therefore, that the provisions relating to withdrawal of a foreign corporation were inserted in Section 13(k) primarily to cover such a situation. There is nothing to indicate any reason why a foreign corporation on its dissolution should be treated differently from a dissolved domestic corporation. The only basis for the construction contended for by the Commissioner would appear to be the administrative convenience of a formal act taking place in this State to determine the operation of Section 13(k). In the recent case of Bank of Alameda v. McColgan, 69 Cal. Ppp, 2d 464, however, although the administrative advisability of requiring such a formal act was recognized, it was held not to determine the application of Section 13(k) to the claim for refund of a domestic corporation. In that case the voluntary dissolution of a bank had proceeded to the extent that the bank had irrevocably lost its privilege of doing a corporate business, except for purposes of winding up. Since, under Section 4a of the Act, the tax is on this privilege, the loss thereof was held to determine the "effective date of dissolution" without the necessity of a formal certificate of dissolution being filed with the Secretary of State.

In his supplementary brief filed after the Bank of Alameda decision, it is argued by the Commissioner that that case is inapplicable to any bank or corporation dissolved or withdrawn from California after 1939. This argument is based on certain language in the decision referring to the 1939 amendment to Section 29(b) of the Act, (Chapter 1050, Statutes of 1939), requiring a certificate from the Franchise Tax Commissioner that taxes have *been* paid before the formal certificate of dissolution can be filed by the Secretary of State. We are unable to understand, however, how that amendment can be considered as in any way changing the law as respects the "... effective date of ... dissolution or withdrawal . . . " of a corporation. In 193'7 the Section conditioned the filing of a decree of dissolution or termination or of a certificate of the surrender by a foreign corporation of its right to do intrastate business here upon the payment of the tax. The only change arising from the 1939 amendment was the conditioning of the filing of such documents upon the obtaining from the Commissioner and the filing of a certificate to the effect that all taxes have been paid or secured, It appears to us that the amendment relates only to the manner of establishing the payment of the tax and does not

involve the question of the date of dissolution or withdrawal.

A corporation dissolved in the state of its incorporation is,. for most purposes, dissolved everywhere. Marion Phosphate Co. v. Perry, 74 Fed. 425; National Surety, Co. v. Cobb? 66 F. 2d 323. Appellant had thus as irrevocably lost its privilege of doing a corporate business in California when it was dissolved under the laws of Minnesota as had the corporate taxpayer in the Bank of Alameda case. Since the theory of that decision is that the operation of Section 13(k) is determined by the loss of this privilege, it follows that Appellant is entitled to refund of the amount of tax attributed to the period subsequent to the date of its dissolution in Minnesota.

O R D E R

Pursuant to the views expressed in the opinion on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying to the extent of $990.57 the claim of Waland Lumber Company for a refund of tax in the amount of $1,650.93 for the taxable year ended December 13, 1942, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. The Commissioner is hereby directed to give credit to said Waland Lumber Company for said amount of $6990.57 against any taxes due from it under the Bank and Corporation Franchise Tax Act and to refund the balance of said $990.57 to said Company and otherwise to proceed in conformity with this order.

Done at Sacramento, California, this 18th day of September, 1946, by the State Board of Equalization.

Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary